SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

---------------------------------------x Index No. 4750-07

JEFFREY PROVENZANO, THOMAS BENJAMIN and MONICA AGOSTO, on behalf of themselves and all others similarly situated,

Date purchased: 6/18/07

Plaintiffs

-against-

THE THOMSON CORPORATION and WEST PUBLISHING CORPORATION d/b/a BARBRI,

Defendants.

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SUMMONS

Plaintiffs hereby designate Albany County as the place of Trial

TO: THE THOMSON CORPORATION
Metro Center, One Station Plaza
Stamford, Connecticut

The above-named defendant is hereby summoned, to answer the action and to serve a copy of its Answer, or if the Amended Complaint is not served with the Summons, to serve a Notice of Appearance on the plaintiffs' Attorney, within twenty (20) days after the service of this Summons, exclusive of the day of service or within thirty (30) days after the service is complete, if the Summons is not personally served upon the above-named defendant within the State of New York and in the case of the failure of the above-named defendant to appear or answer, a judgment will be taken against the above-named defendant by default for the relief demanded in the Amended Complaint.

Dockets.Justia.com

DATED: Haines Falls, New York
June 26, 2007

ROBERT L. ARLEO, ESQ.
Attorney for the Plaintiffs
164 Sunset Park Road
Haines Falls, New York 12436
(518) 589-5264

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY
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Defendants

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AMENDED COMPLAINT

I. Preliminary Statement

1. The above-named Plaintiffs, on their own behalf and on behalf of the class they seek to represent, bring this action for the wrongful practices of the above-named Defendants. Said Defendants each violated the laws of the State of New York by engaging in deceptive trade practices and fraudulent conduct which caused the Plaintiffs, and the class they seek to represent, to purchase the "BAR/BRI" New York bar review products and to pay inflated, unjustifiable prices for same. The actions of the Defendants herein constitute fraudulent inducement under New York law and constitute violations of Section 349 of the New York General Business Law. Plaintiffs bring the herein action pursuant to Article 9 of the New York Civil Practice Law and Rules which authorizes the maintenance of class actions in the State of New

York.

II. Jurisdiction

2. Jurisdiction is proper in that the herein action is based upon violations of the laws of the State of New York.

III. Venue

3. Venue is proper in that the Defendants are each doing business in Albany County and in that the Plaintiffs each paid for the subject bar review course complained of herein in Albany County.

IV. Parties

4. The Plaintiff Jeffrey Provenzano ("Provenzano") is a natural person residing in Ulster County, New York. The Plaintiff Provenzano is a 2006 graduate of Albany law school. In 2006 the Plaintiff Provenzano purchased the full BAR/BRI bar review course in Albany County in preparation for undertaking the New York State bar examination. In 2006 the Plaintiff Provenzano sat for the New York State bar examination which was administered in Albany County.

5. The Plaintiff Thomas Benjamin ("Benjamin") is a natural person residing in Greene County, New York. The Plaintiff Benjamin is a 2005 graduate of Albany law school. In 2005 the

Plaintiff Benjamin completed the purchase of the full BAR/BRI bar review course in Albany County in preparation for undertaking the New York State bar examination. In 2005 the Plaintiff Benjamin sat for the New York State bar examination which was administered in Albany County.

6. The Plaintiff Monica Agosto ("Agosto") is a natural person residing in Greene County, New York. The Plaintiff Agosto is a 2005 graduate of Albany law school. In 2005 the Plaintiff Agosto purchased the full BAR/BRI bar review course in Albany County in preparation for undertaking the New York State bar examination. In 2005 the Plaintiff Agosto sat for the New York State bar examination which was administered in Albany County.

7. The Defendant The Thomson Corporation ("TTC") is a corporation organized under the Business Corporations Act of Ontario, Canada. The Defendant TCC has a principal place of business located in Metro Center, One Station Plaza, Stamford, Connecticut. Upon information and belief, the Defendant TCC is authorized by the New York Secretary of State to do business in the State of New York. As part of said authorization the Defendant TCC regularly does business in Albany County.

8. The Defendant West Publishing Corporation ("West") is a wholly-own subsidiary of the Defendant TCC and is also known as "West Group". The Defendant West does business as BAR/BRI. BAR/BRI is a commercial bar review which is marketed and sold to persons

who are law school graduates and who intend to take the bar exam in each state of the United States including the State of New York. The Defendant West maintains a principal place of business in the State of Minnesota which is located at 610 Opperman Drive, St. Paul Minnesota. Upon information and belief, the Defendant West is authorized by the New York Secretary of State to do business in the State of New York. As part of said authorization the Defendant West regularly does business in Albany County. The Defendant West is owned and operated by the Defendant TTC.

9. As used heretofore herein the term "BAR/BRI" refers to each Defendant named herein.

IV. Facts Relating To Named Plaintiffs

10. The Plaintiffs repeat and reiterate the facts set forth in paragraphs "1" through "9" with the same force and effect as if stated at length herein.

11. As law students who attended a law school in the State of New York, each of the Plaintiffs are part of a large group of persons who, from the several months prior to their very first day of entry as law students, have been barraged, bombarded and solicited based upon policies and practices invoked by the Defendants via their operation of the BAR/BRI bar review course.

12. Said barragement, bombardment and solicitation was

effected via the use of common written advertisements, in the various forms described below, which were and are directed and intended for review by every law student attending a law school located within the State of New York.

13. Said advertisements include pamphlets distributed by BAR/BRI throughout the various New York law schools by student representatives hired by BAR/BRI.

14. The advertising pamphlets referenced in paragraph 13 are commonly distributed en masse to law students through various methods including via placement in student "mailboxes" which are typically located in the various New York law schools.

15. The pamphlets are also distributed to law students from tables which are typically set up by the BAR/BRI student representatives in law school cafeterias and law school hallways as same are located in the various New York law schools.

16. In addition to the advertising pamphlets described heretofore herein BAR/BRI posters are hung on public posting boards which are typically located throughout the various law schools located within the State of New York.

17. In addition to pamphlet and poster board advertising, BAR/BRI also places large, display advertisements in the various school newspapers which each New York law school publishes. Also,

BAR/BRI purchasers display advertisements in "The National Jurist", a popular magazine which is distributed in every law school in American including each of the law schools locates within the State of New York.

18. In addition to the pamphlet advertising, poster board advertising and newspaper and magazine advertising described heretofore herein the various BAR/BRI representatives also engage in oral presentations advancing the BAR/BRI program via typically addressing law students prior to the commencement of class. At said addresses BAR/BRI advertising pamphlets are distributed.

19. In addition to the pamphlet advertising, poster board advertising, newspaper and magazine advertising and pre-class advertising described heretofore herein BAR/BRI invites law students to free food and drink gatherings wherein the BAR/BRI program is further advanced and wherein BAR/BRI advertising pamphlets are distributed.

20. In addition to the pamphlet advertising, poster board advertising, newspaper and magazine advertising, pre-class advertising and free food and drink gatherings described heretofore herein BAR/BRI maintains a website which is accessed via "www.barbri.com". Said website address is set forth in all of the advertising methods set forth above and is easily accessible to any law student attending any law school located within the State of New York.

21. In addition to the pamphlet advertising, poster board advertising, newspaper and magazine advertising, pre-class advertising, free food and drink gatherings and website described heretofore herein BAR/BRI conducts a one week pre-law school session for those first year law students preparing to attend one of the law schools located within the State of New York. Said sessions occur at various weekly intervals at various locations during the several months before the commencement of first year classes. In conjunction with said pre-law school offering BAR/BRI maintains a website which may be accessed via "lawschoolprep.com". On this website law students are immediately made aware of the status of BAR/BRI as the largest bar review course in America. At these pre-law school sessions, the alleged necessity to ultimately purchase a BAR/BRI New York bar review product is zealously advanced by the administrators and the law professors who participate in the BAR/BRI pre-law school sessions.

21A. During the several months before entering law school first year students receive mail correspondences from BAR/BRI advertising the BAR/BRI pre-law sessions. In conjunction with said mailings BAR/BRI obtains mailing lists from sources presently unknown.

22. BAR/BRI directs its advertising at law students commencing from a time period beginning during the several months before their entrance into law school. Indeed, BAR/BRI aggressively encourages first year law students to purchase the full BAR/BRI New York bar

review course so as to "lock-in" a price which will be lower than the price charged by BAR/BRI for the full review at the time the particular law student graduates law school and is ready to attempt the New York State bar examination. In conjunction therewith BAR/BRI invokes their advertising strategies and representations, as same are described heretofore herein, to those first year law students.

23. BAR/BRI undertakes its advertising knowing full well that the law school experience constitutes a setting wherein law students attending any of the law schools located within the State of New York are highly impressionable and concerned with passing the New York State bar examination, arguably the most difficult bar examination in the United States. Furthermore, BAR/BRI understands and exploits the "boot camp" experience common to every law school in the State of New York wherein law students are closely grouped together for extended periods of time, especially in the first year, and where common themes run strongly amongst anxious and impression persons.

24. In sum, it is virtually impossible for a law student attending a law school located within the State of New York, such as the 3 class representatives named herein, to avoid ingestion of the massive BAR/BRI representations advanced via the BAR/BRI advertising policies and practices. As Casey Stengel would promote the New York Mets in their early days by advancing that the words from the mouths of babes born in New York is "Metsie, Metsie,

Metsie" (see Exhibit "A" attached hereto), BAR/BRI insures that the first and continuous words heard in the ears of persons attending law schools located within the State of New York is "BAR/BRI, BAR/BRI, BAR/BRI".

25. The common and typical theme set forth in all of the the written advertisements and written advertising methods (i.e. the BAR/BRI website) used by BAR/BRI is to falsely and deceptively convey the mantra that a person graduating from a New York law school must purchase a BAR/BRI bar review course in order to have any chance of passing the New York State bar examination. The written advertisements disseminated by BAR/BRI, as particularly described heretofore herein, contain and convey to law students attending a New York law school statements which falsely imply that it is absolutely imperative for a bar candidate to enroll in the BAR/BRI program in order to pass the New York State bar examination of the particular candidate's choice. In regard to the herein action said statements are designated to be in conjunction with the New York state bar examination. These false statements constitute deceptive acts and practices which fraudulently induce graduates of a law school located within the State of New York who are intending to attempt to pass the New York State bar examination to purchase the full BAR/BRI bar review course or to purchase portions thereof or other BAR/BRI bar review products at artificially inflated prices and to purchase unneeded BAR/BRI products. Said purchases are made under the false belief created by BAR/BRI's written advertisements that a bar candidate cannot pass the New York State

bar examination unless he or she purchases a BAR/BRI New York bar review product. Importantly, the BAR/BRI advertising policies intentionally omit important, material facts concerning a) the administration of the New York State bar examination including that a guaranteed number of persons attempting the State bar examination will fail the New York State bar examination and that no BAR/BRI product can alter this fact and b) the availability of other comparable full and supplemental bar review courses and products offered to persons attending a law school located within the State of New York.

26. An example of the herein complained of improper policies and practices are certain statements contained in the BAR/BRI website which are reflective of the type of statements which are included in other forms of written advertising disseminated by BAR/BRI and are reflective of the oral statements which are made by representatives hired by BAR/BRI to promote its bar review products.

27. The following statements contained on various portions of the BAR/BRI website are examples of statements contained in the written advertisements used by BAR/BRI (i.e. pamphlets, wall posters, newspaper and magazine ads) which are absolutely and unequivocally fraudulent, false, deceptive and misleading:

1) "Frequently Asked Questions" a copy of which is attached hereto as Exhibit "B"-

FALSE STATEMENT- **Q. Why do I need a bar review course?**

"The bar exam is different from law school. It is nearly impossible to accumulate the necessary materials, prepare a 2 month study plan and discipline yourself to pass the bar exam without a review course. Additionally, most law students could not take all topics tested on their state's bar exam in law school. Even if you studied a bar topic in law school, it is generally taught from a different perspective than how it is tested on the bar exam. Enrolling in BAR/BRI provides the experience and expertise of bar exam professionals.".

28. The factual truth which refutes the statement "The bar exam is different from law school, as contained in the BAR/BRI website and as set forth in paragraph "27", is that the bar exam *is not* different from law school. The form of the "multistage" portion of the bar examination, i.e. 200 multiple choice questions wherein the bar candidate is asked to choose the best possible answer from 4 choices, is frequently used by professors at the various New York law schools. Furthermore, the essay portion of the New York State bar examination contains questions which are virtually identical in form and substance to essay questions given on law school examinations in each New York State law school. This statement represents the key to perhaps BAR/BRI's greatest false implication: That the bar exam is different from the 3-4 year law school experience therefore, we are indispensable, you have no chance of passing without us.

29. The factual truth which refutes the statement "It is

nearly impossible to accumulate the necessary materials, prepare a 2 month study plan and discipline yourself to pass the bar exam without a review course", as contained in the BAR/BRI website and as set forth in paragraph "27", is that, after completion of the rigorous law school experience, candidates attempting to pass the New York State bar examination are fully capable of scheduling studying on their own 8 hours per day, seven days per week.

30. The factual truth which refutes the statement "most law students could not take all topics tested on their state's bar exam", as contained in the BAR/BRI website and as set forth in paragraph "26" heretofore herein, is that those topics tested on the New York State bar examination are offered in every law school located within the state of New York. The falsity of said statement is further proved by the New York "Subject Frequency Chart" procured from the BAR/BRI website. A copy of same is attached hereto as Exhibit "C". As confirmed by said chart the New York essays frequently concern the subjects tested on the Multistate, i.e. contracts, criminal law/procedure, torts, real property and federal jurisdiction (civil procedure). These areas of substantive law constitute the core first year law school subjects which are *mandated* by every A.B.A. approved law school in America, including every law school located within the State of New York. Notwithstanding, it is false, deceptive and misleading to state that most law students could not take all topics tested on their state's bar exam. In New York, law students have ample time to enroll in elective courses such as wills and trusts, corporations,

professional responsibility, New York practice, evidence, partnerships, constitutional law and domestic relations and other areas of New York substantive law which may appear on the New York State bar examination.

31. The factual truth which refutes the statement that substantive law is taught from a "different prospective" in law school than how it is tested on a bar exam, as contained in the BAR/BRI website and as set forth in paragraph "26" heretofore herein, is that the requirements for a valid will in New York, the grounds for divorce in New York, the fiduciary responsibilities of officers and directors in New York, the professional responsibilities of a lawyer practicing in New York, the contents of the New York Civil Practice Law and Rules, and all those other areas of substantive law which may be tested on the New York State bar examination, are all taught and tested virtually the same on law school questions given by professors teaching at the various New York law schools as is tested on questions which appears on the New York bar examination.

32. A portion of the BAR/BRI website contains written statement which imply that only BAR/BRI "bar exam professionals" can teach how to pass a bar examination. That portion of the BAR/BRI website entitled "**Q. Who teaches the BAR/BRI classes?**, a copy of which is attached hereto as Exhibit "D", sets forth "BAR/BRI has a national and regional faculty of bar exam specialists. They are experts in teaching for this unique exam and

they know how their subjects are tested on the bar. Many of these experts have been teaching for BAR/BRI for more than 30 years." In addition thereto that portion of the BAR/BRI website entitled "About the Faculty", a copy of which is attached hereto as Exhibit "E", sets forth "In our course, you will see and hear the most dynamic bar review lecturers in the country. Our faculty, some of whom are profiled below, have spent countless hours analyzing past bar exams in order to develop strategies for your success.". These statements are fraudulent, false, deceptive and misleading in that the law school Professors teaching at law schools located within the State of New York, who taught the Plaintiffs and the class defined herein, *must* know the substantive law tested on the New York State bar examination and *must* impute that substantive knowledge to their students during class. Thus, the statements set forth in the "Who teaches the BAR/BRI classes", and the statement these experts have "....spent countless hours analyzing past bar exams in order to develop strategies for your success." is refuted by the facts set forth herein.

33. The portion of the BAR/BRI website entitled "About BAR/BRI- A message from Richard J. Convisor, Founder and Chairman", a copy of which is attached hereto as Exhibit "F", sets forth as follows:

" And of course, when you are ready to tackle the ultimate final exam, ***your bar exam,*** BAR/BRI will be there for you with the nation's most experienced, most personalized, and most up-to-date bar review course. Only BAR/BRI combines comprehensive, yet concise outlines, dynamic law school professors, and the most complete Multistage and Essay Testing programs to give you the best chance of passing your bar exam ***the first time***.

34. The factual truth which refutes the statement contained in the message from Richard J. Convisor, i.e. "Only BAR/BRI combines comprehensive, yet concise outlines, dynamic law school professors, and the most complete Multistage and Essay Testing programs to give you the best chance of passing your bar exam ***the first time***" is that a simple search reveals other choices for bar candidates in New York, including the "Pieper" bar review and the "PMBR" Multistate bar review course, all of which offer comprehensive, concise outlines, dynamic instructors, and complete Multistate and essay testing.

35. Other fraudulent and deceptive acts engaged in by the Defendants include, but are not limited to, the following:

A. Forcing the Plaintiffs and the class defined herein to purchase the full BAR/BRI bar review course, thus tying in unneeded other BAR/BRI products such as the BAR/BRI Multistate Review and Essay Writing review when there are other preparation courses for the Multistate and essay portions of the New York State bar examination which are available to persons attempting to pass the New York State bar examination. Most notable and popular is the "PMBR" Multistate Bar Review Course. The Defendants engage in this forced and unnecessary selling with full knowledge that many of their customers are also spending additional money for other courses which are designed to teach how to pass the Multistate and/or essay portions of the New York State Bar examination. Although there are several other supplemental bar review courses, the tying situation stifled other competition. The Defendants otherwise engaged in unconscionable, anti competitive business conduct in an effort to raise their prices and monopolize the limited New York bar review market. Once the Defendants succeeded in monopolizing the New York bar review market they no longer had a need to insure the best possible product for the money. As a result thereof they charged consumers ultra inflated and unconscionable fees all under the guise that their bar review products are in fact absolutely legitimate and absolutely needed. Furthermore, by bundling unnecessary products the Defendants stifled other legitimate and better competitors with lower prices. Furthermore, the Defendants omitted disclosing these material facts in their written advertisements as same are described above.

B. Advising persons who have failed the New York State bar examination despite purchasing the full BAR/BRI New York bar review course that additional supplemental courses offered by BAR/BRI, such as essay writing and individual tutoring sessions, must be purchased so that these persons can "hone in" on their specific area of weakness when, in fact, these weaknesses should have been confronted and resolved in conjunction with the full BAR/BRI bar review course. Furthermore, the Defendants omitted disclosing these material facts in their written advertisements as same are described above.

AS AND FOR A FIRST CAUSE OF ACTION

VIOLATION OF THE NEW YORK GENERAL BUSINESS LAW SECTION 349

36. The Plaintiffs repeat and reiterate the facts set froth in paragraphs "1" through "35" with the same force and effect as if stated at length herein.

37. Section 349 of the New York General Business Law makes unlawful any deceptive acts or practices in the conduct of any business, trade or commerce in the State of New York or in the furnishing of any service in the State of New York.

38. In invoking the massive and continuous dissemination of written advertisements containing uniform fraudulent, false, deceptive and misleading statements set forth so as to a) dupe the Plaintiffs and the class defined below (as factually described heretofore herein) into paying an inflated price for BAR/BRI New York bar review products and b) dupe the Plaintiffs and the class into purchasing unnecessary bar review services and by tying in those unnecessary bar review services to the cost of the full BAR/BRI New York State bar review course and by monopolizing the New York bar review business and in omitting material facts regarding the New York State bar examination and other available bar review courses and omitting facts concerning their monopoly,

the Defendants have each violated Section 349 of the New York General Business Law as said acts and omissions are deceptive and occur in the conduct of the business, trade and commerce engaged in by the Defendants and in conjunction with the furnishing of the BAR/BRI bar review service by the Defendants.

39. That the policies and practices complained of herein were likely to mislead reasonable graduates of law schools located within the State of New York acting reasonably under the circumstances.

40. That the policies and practices complained of herein include the use of material factual omissions in effort to compel the Plaintiffs and the class to purchase BAR/BRI New York State bar review products.

41. That the Defendants' respective violations of Section 349 of the New York General Business Law are each willful and knowing.

42. As of result of the Defendants' violations of Section 349 of the New York General Business Law the Plaintiffs and the class defined herein have each uniformly suffered actual damages in monetary amounts as follows:

a) for those Plaintiffs and class members who purchased only the full BAR/BRI New York bar review course an amount equal to an overcharge of $1,000.00 each;

b) for those Plaintiffs and class members who purchased the full BAR/BRI New York bar review course and any additional supplementary BAR/BRI course intended for the New York State bar examination an amount equal to an overcharge of $1,000.00 each for the full BAR/BRI course and an amount equal to the total sum of the additional BAR/BRI courses.

AS AND FOR A SECOND CAUSE OF ACTION

FRAUDULENT INDUCEMENT

43. The Plaintiffs repeat and reiterate paragraphs "1" through "42" as if stated at length herein.

44. Via their actions set forth heretofore herein the Defendants knowingly and intentionally misrepresented to the Plaintiffs and to the classes defined herein material facts concerning the nature and administration of the New York State bar examination, the material facts concerning the value of BAR/BRI New York state bar products and the availability and value of other bar review products, and the material facts concerning their monopolization of the New York bar review business.

45. The Defendant's false promises and representations were intended to deceive the Plaintiffs and the members of the class defined herein as described heretofore herein.

46. As set forth heretofore herein the Plaintiffs and the members of the class each have been damaged by the Defendants' knowing and intentional misrepresentations in that said Plaintiffs and class members have each unjustifiably paid excess monies to the Defendants for the purchase of BAR/BRI bar review products and have paid monies to the Defendants for unneeded BAR/BRI products.

47. Said damages are as follows:

a) for those Plaintiffs and class members who purchased only the full BAR/BRI New York bar review course an amount equal to an overcharge of $1,000.00 each;

b) for those Plaintiffs and class members who purchased the full BAR/BRI New York bar review course and any additional supplementary BAR/BRI course intended for the New York State bar examination an amount equal to an overcharge of $1,000.00 each for the full BAR/BRI course and an amount equal to the total sum of the additional BAR/BRI courses.

IV. Class Allegations

48. The Plaintiffs repeat and reiterate paragraphs "1" through "47" as if stated at length herein.

49. This action is brought on behalf of a class consisting of all persons who graduated from a law school located within the

boundaries of the State of New York and, in regard to the claim for violation of Section 349 of the New York General Business Law as set forth above, during a period commencing from 4 years prior to the filing of the complaint herein, purchased any BAR/BRI product in preparation for the New York State bar examination. In regard to the claims for fraudulent inducement as set forth above all persons who graduated from a law school located within the boundaries of the State of New York and, for period commencing 6 years prior to the filing of the complaint in the herein action, purchased any BAR/BRI bar review product in preparation for the New York State bar examination.

50. Plaintiffs allege on information and belief that the class is so numerous that joinder of all members is impractical. According to statistics released by the Defendants, the members of the class numbers in the thousands.

51. There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendants caused the Plaintiffs to suffer actual damages based upon the Defendants' use of fraudulent and false, deceptive and misleading business trade practices in violation of Section 349 of the New York General Business Law and in violation of the New York law regarding fraudulent inducement.

52. The Plaintiffs' claims are typical of those of the class

members. All are based on the same facts and legal theories.

53. The commonality and typicality of the Plaintiffs claims are further evidenced and legally supported based upon the following facts:

--All members of the class were exposed to the same fraudulent, false, deceptive and misleading misrepresentations contained in written advertisements disseminated by BAR/BRI;

--BAR/BRI disseminated different written advertisements, all of which contained common misrepresentations and which omitted material facts regarding the New York State bar examination, the value of BAR/BRI New York bar review products and the available of other full and supplemental bar review courses and the Defendants' monopoly regarding the New York bar review business;

--All members of the class are more bound together by a mutual interest in the adjudication of the common questions than they are divided by any individual member's interest in matters peculiar to them;

--As there exists identical misrepresentations set forth in different writings viewed by the class members there are no individual questions which could justify denial of class certification herein.

--Based upon the facts sets forth heretofore herein reliance by each of the class members can be presumed.

53. The Plaintiffs will fairly and adequately protect the interests of the class defined herein. The Plaintiffs have retained counsel experienced in handling class actions. Neither Plaintiff nor their counsel have any interests which might cause them not to vigorously pursue the herein action.

54. Certification of a class is appropriate in that the Defendants have acted on grounds generally applicable to the class defined herein. Furthermore, class certification must be granted herein as CPLR section 901 should be liberally construed by the Court.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and in favor of the class for:

A. Certification of the class pursuant to Article 9 of the New York Civil Practice Law and Rules.

B. Actual damages for the Plaintiffs and the class in the form of restitution for the monetary damages described heretofore herein in the amounts set forth heretofore herein.

C. Actual damages exceeding three times the actual damages suffered by the Plaintiffs and the class pursuant to Sec. 349(h) of the New York General Business Law.

D. A permanent in injunction against the further exercise by the Defendants of the acts and practices described heretofore herein.

E. An injunction ordering the termination of the monopoly created by the Defendants.

F. Attorney's fees, litigation expenses and costs incurred herein.

G. Such other and further relief as may be just and proper.

Dated: Haines Falls, New York
June 26, 2007

ROBERT L. ARLEO, ESQ.
Attorney for the Plaintiffs
164 Sunset Park Road
Haines Falls, New York 12436
(518) 589-5264

EXHIBIT A

Metsie! Metsie!

The Left Coast Metzine

- Home
- What's a "Metsie! Metsie!"?
- About the Author
- Contact
- Metsochism

What's a "Metsie! Metsie!"?

Author: Andee - Date: March 31st, 2007

The roots of the name of this blog go back to original Mets manager Casey Stengel, then a mere 73 years of age, who in a 1963 interview said the following:

"We got 'em from the babies up. As soon as the kid can talk, he's taught to say 'Metsie! Metsie!' Not papa, not mama, 'Metsie! Metsie! Metsie!' So that's what they are. They're now singin' the kids 'Metsie! Metsie! Metsie!', see, when they want food and everything. So the babies are even starting. We got 'em from four years on, we got 'em from ten years on, fifteen years on, eighteen years on. And we got 'em in a group!"

I know it worked for me.

(N.B. to anyone who has never heard Stengel speak: Imagine a rusty doorhinge saying the above, with perhaps a coffegrinder whizzing away in the background, accompanied by a snoring nutria, and that might partially give you the idea.)

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EXHIBIT B

Saturday, June 23, 2007

FAQs

Q. What is the bar exam?
Each state's bar examination is unique but almost all states use a two day format incorporating the nationally administered Multistate Bar Exam (MBE), a 6-hour, 200 question multiple-choice exam as a component of their test. "State specific" law is often tested on a second day of testing, usually in essay format. Visit **www.barbri.com** for information for each jurisdiction's bar exam.

Q. When is the bar exam offered?
In most jurisdictions, the bar exam is offered twice a year, in February and July.

Q. Does BAR/BRI prepare me for both the Multistate (MBE) and the "state specific" section of the exam?
Yes, BAR/BRI is a full-service bar review course with 40 years of experience preparing law students for bar exams nationwide. BAR/BRI's coverage includes substantive and practical preparation for the MBE, the "state specific" section and the Multistate Performance Test or Multistate Essay Exam for states that have adopted those components. We provide the perfect combination of expert lecturers, written materials and practice testing.

Q. What is the Multistate Professional Responsibility Exam (MPRE)? Do I need it and when do I take it?
The MPRE is a national ethics exam conducted by the National Conference of Bar Examiners and is offered three times each year in March, August and November. The MPRE is required by virtually all jurisdictions. BAR/BRI offers a review course for the MPRE, free of charge, to all BAR/BRI students who have $175 on account. Consult **www.ncbex.org** for further exam information.

Q. Why do I need a bar review course?
The bar exam is different from law school. It is nearly impossible to accumulate the necessary materials, prepare a 2-month study plan and discipline yourself to pass the bar exam without a review course. Additionally, most law students could not take all topics tested on their state's bar exam in law school. Even if you studied a bar topic in law school, it is generally taught from a different perspective than how it is tested on the bar exam. Enrolling in BAR/BRI provides the experience and expertise of bar exam professionals.

Q. Who teaches the BAR/BRI classes?
BAR/BRI has a national and regional faculty of bar exam specialists. They are experts in teaching for this unique exam and they know how their subjects are tested on the bar. Many of these specialists have been teaching for BAR/BRI for more than 30 years.

Q. How can BAR/BRI help me during law school?
BAR/BRI does more than prepare students for the bar exam. The BAR/BRI Law School Volumes (First Year and Upper Level) contain comprehensive outlines for first year subjects and the most critical upper level topics. We also offer final exam review lectures (at select locations) providing BAR/BRI students a distinct advantage in their law school studies. Furthermore, most upper level students take the BAR/BRI MPRE course in preparation for the Multistate Professional Responsibility Exam while in law school. The MPRE program is free for BAR/BRI enrollees with $175 on account. See ***How to Enroll*** for registration information.

Q. Will I save money by enrolling early?
Yes. Once you have $175 on account with BAR/BRI, your tuition will be "locked-in" for up to two years after your graduation from law school.

Q. What happens if my plans change before graduation?
Students enrolled in BAR/BRI may change the year of their bar exam, course location or transfer to another jurisdiction at any time before graduation. BAR/BRI is the nation's largest bar review provider and offers courses in preparation for all jurisdictions' bar exams. Your $175 registration fee "locks-in" the tuition in effect at the time of registration for up to two years after your graduation for whichever jurisdiction you eventually take.
(Note: tuitions vary from state to state.)

Q. What if I have not taken all subjects tested on the bar exam?
BAR/BRI presupposes that students have not taken every subject tested on the bar exam. Moreover, students probably have not been exposed to the local law tested on their state's exam. The BAR/BRI course is designed to teach exactly what you need to know, even if you didn't take the subject in law school.

Q. Does BAR/BRI offer simulated bar exams?
Yes, BAR/BRI students take a full 6-hour simulated MBE that is computer graded against all other BAR/BRI students nationwide. Your exam may be graded against as many as 35,000 other BAR/BRI students. The computer analysis of your exam results offers a personalized evaluation of your strengths and weaknesses. Additionally, in many jurisdictions, BAR/BRI also offers a "state-specific" simulated exam.

Q. Do I need to be physically located in a certain state to take that state's bar review course?
It depends on the state. Some of the more popular bar exam courses are offered in multiple in-state and out-of-state locations. In most jurisdictions, "Self Study" is available as an option for additional fees. Please note, you must physically be in the state to sit for the bar exam (i.e., the New York Bar Exam is administered only in New York state).

Q. Can I take two states' bar exams concurrently?
Sometimes. Since the MBE is a standardized exam used in most jurisdictions, it is always administered on the last Wednesday of February and July. The majority of states administer their "state specific" section on the Tuesday before or Thursday after the Multistate day, allowing a candidate to sit for two exams concurrently (three consecutive days of testing). Consult **www.barbri.com** for individual state bar exam dates.

Q. Does BAR/BRI provide accommodations for students with disabilities?
Yes, BAR/BRI complies with the Americans with Disabilities Acts of 1990 (ADA) and provides appropriate auxiliary aids or services where necessary to ensure effective communication for its students with disabilities. A request form and documentation must be submitted. To download a form, please go to **ADA Accommodations Application**. Please submit your form as early as possible.

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EXHIBIT C

barbri BAR REVIEW

Saturday, June 23, 2007

Subject Frequency Chart

barbri

NEW YORK BAR EXAM SUBJECT FREQUENCY

The following is a list of the subjects which have appeared on the essay section of the last six New York Bar Examinations along with a frequency chart of how often each particular subject has appeared on the essay section of the bar exam since 1981.

WINTER 2004	SUMMER 2005
A.M. Session	**A.M. Session**
1. Corporations/Contracts 2. Criminal Law/Criminal Procedure/Evidence 3. Domestic Relations/Real Property	1. Corporations/Contracts/Agency/Prof. Responsibility 2. Criminal Law/Criminal Procedure 3. Domestic Relations/NY Practice/Conflict of Laws
P.M. Session	**P.M. Session**
4. Torts/NY Practice 5. Wills/Trusts 6. MPT: Draft an Evidentiary Brief for the State's Attorney's Office	4. Torts/NY Practice/Evidence 5. Wills 6. MPT: Draft a Memo of Law re: Zoning
SUMMER 2004	**WINTER 2005**
A.M. Session	**A.M. Session**
1. Corporations/Contracts 2. Criminal Procedure 3. Real Property/Prof. Responsibility	1. Criminal Law/Criminal Procedure/Prof. Responsibility 2. Real Property/Domestic Relations 3. Contracts/Corporations
P.M. Session	**P.M. Session**
4. Torts/Conflict of Laws/NY Practice/No Fault Insurance 5. Wills/Trusts/Prof. Responsibility 6. MPT: Draft a "Case Planning Memo"	4. Torts/NY Practice/Evidence 5. Wills 6. MPT: Draft a Brief for the State's Attorney's Office
WINTER 2006	**SUMMER 2006**
A.M. Session	**A.M. Session**
1. Corporations/Contracts 2. Criminal Law/Criminal Procedure 3. Real Property/Domestic Relations	1. Corporations/NY Practice/Contracts 2. Evidence/Criminal Law 3. Torts/Agency/Secured Transactions/NY Practice/No Fault Insurance
P.M. Session	**P.M. Session**
4. Torts 5. NY Practice/Wills/Evidence 6. MPT: Draft a Memo of Law re: Attorney Fee Splitting	4. Real Property/Domestic Relations/Prof. Responsibility 5. Trusts/Wills 6. MPT: Memo re: Real Estate Transaction

	TOPIC	# BAR EXAMS (possible 48)	# QUESTIONS (possible 284)
1	CONTRACTS/SALES/EQUITY	48	75
2	NEW YORK PRACTICE	48	67
3	WILLS	47	50
4	CRIMINAL LAW/PROCEDURE	47	47
5	TORTS/EQUITY	43	46
6	DOMESTIC RELATIONS	41	41
7	CORPORATIONS	38	40
8	REAL PROPERTY/MORTGAGES	28	31
9	EVIDENCE	25	29
10	TRUSTS	24	23
11	PARTNERSHIP	14	14
12	FEDERAL JURISDICTION	13	14
13	CONFLICT OF LAWS	11	13
14	PROFESSIONAL RESPONSIBILITY*	11	12
15	AGENCY	11	11
16	COMMERCIAL PAPER	9	9
17	NO FAULT INSURANCE	6	6
18	FUTURE INTERESTS	6	5
19	WORKERS' COMPENSATION	6	5
20	CONSTITUTIONAL LAW	3	3
21	SECURED TRANSACTIONS	3	3

*Has been tested on 11 out of 13 exams since added in July 2000

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BAR/BRI Bar Review

Click here to download the **NY Subject Frequency Chart.**

EXHIBIT D

EXHIBIT E

Saturday, June 23, 2007

About the Faculty

In our course, you will see and hear the most dynamic bar review lecturers in the country. Our faculty, some of whom are profiled below, have spent countless hours analyzing past bar exams in order to develop strategies for your success.

Professor Vincent Alexander
St. John's University School of Law
Evidence / NY Practice

Vince Alexander teaches New York Practice and Evidence at St. John's. He received his B.A., *magna cum laude*, from Yale and his J.D., *cum laude*, from St. John's, where he was Editor-In-Chief of the *Law Review*. He also has an LL.M and a J.S.D. from Columbia Law School. His publications include articles on Civil Procedure and a leading hornbook on evidence, *Evidence in New York State and Federal Courts*. He is a contributing co-author of *McKinney's Commentaries*.
21 year BAR/BRI lecturer

Professor Erwin Chemerinsky
Duke University School of Law
Constitutional Law

Erwin Chemerinsky teaches Constitutional Law at Duke Law School, where he is the Alston & Bird Professor of Law. He is an alumnus of Harvard Law School, and has written four books, including *Constitutional Law: Principles and Policies* (2d ed. 2002), a treatise on constitutional law, and *Constitutional Law* (2001), a casebook on constitutional law.
19 year BAR/BRI lecturer

Joe Tom Easley, Esq.
Conflict of Laws

Joe Tom Easley has been a professor at several law schools, including American University and the University of Virginia. He has also taught public health law at Yale Medical School. He earned his J.D., *cum laude*, from the University of Texas, where he was Managing Editor of the *Texas Law Review*. In addition, he has an M.PH from Yale.
26 year BAR/BRI lecturer

Professor Paula Franzese
Seton Hall University School of Law
Real Property / Future Interests
Commercial Paper / Secured Transactions

Paula Franzese is the Peter W. Rodino Distinguished Professor of Law at Seton Hall, where she teaches Real Property. She received her B.A., summa cum laude, Phi Beta Kappa from Barnard College, Columbia University and her J.D. from Columbia Law School. She served as a law clerk to New Jersey Supreme Court Justice Alan B. Handler. At Seton Hall she has received the Professor of the Year Award seven times and has been named Exemplary Teacher by the American Association for Higher Education.
16 year BAR/BRI lecturer

Professor Richard Freer
Emory University School of Law
Corporations / Federal Jurisdiction
First Year Civil Procedure

Rich Freer is the Robert Howell Hall Professor of Law at Emory. He is currently visiting George Washington Law School where he is teaching Civil Procedure and Corporations. He received his B.A., summa cum laude, from the University of California at San Diego and his J.D. from UCLA. At Emory, he has been named Professor of the Year six times and has also received the triennial law school faculty excellence award and the University's highest teaching award. He has co-authored

two volumes of Moore's Federal Practice and casebooks on Civil Procedure and Business Associations, and authored student texts on Civil Procedure and Federal Courts.
20 year BAR/BRI lecturer

Professor Rafael Guzman
University of Arkansas School of Law
Multistate Testing

Ray Guzman teaches Criminal law, Criminal Procedure, Evidence and AR Criminal Practice at the University of Arkansas School of Law where he has received numerous awards for outstanding teaching. He has assisted applicants with bar exam preparation since 1975 and is considered the leading authority on the Multistate Bar Exam. He is a graduate of the University of Dayton (B.A.) and the George Washington University (LL.B.).
26 year BAR/BRI lecturer

Professor Michael Kaufman
Loyola University Chicago School of Law
Agency / Partnership

Michael Kaufman received his J.D. from the University of Michigan and currently teaches at Loyola University Chicago School of Law. Before joining the law faculty, Professor Kaufman clerked for Judge Nathaniel Jones of the Sixth Circuit Court of Appeals. Professor Kaufman is currently the Director of the Business Law Center at Loyola University Chicago School of Law. ***17 year BAR/BRI lecturer***

Leonard Lakin, Esq.
Former writer/grader for NY Bar Examination
Foreign Attorneys Review / Essay Writing

Leonard Lakin is a member of the New York and Hawaii bars and is the author of several law books and law review articles. Before joining BAR/BRI as an expert in essay writing, he was associated with the New York Board of Law Examiners where he prepared and graded the New York Bar Examination.
21 year BAR/BRI lecturer

Paul Lisnek, Esq.
Professional Responsibility (MPRE & NY)

Paul Lisnek is a former assistant dean of Loyola Law School in Chicago where he taught Professional Responsibility. He received his B.A, J.D. and Ph.D. from the University of Illinois at Urbana. He is the author of over twelve books on lawyering skills including *The Hidden Jury*, with a foreword by Johnnie Cochran. He is currently a commissioner and panel chair for the Illinois Attorney Disciplinary Commission and the executive director of BAR/BRI's Law School Prep Program and National Student Leadership Programs.
6 year BAR/BRI lecturer

Professor Joseph Marino
New York Law School
The Retaker Intensive Bar Course / Essay Writing

Joseph Marino is the associate director of the Academic Skills Program and a full-time Professor at New York Law School where he teaches New York Practice and New York Law in National Perspectives. He is the director of continuing legal education for both the New York Criminal & Civil Courts Bar Association and for the Marino Institute for Continuing Legal Education (MICLE).
33 year Bar Review lecturer

Professor Roger Schechter
The George Washington University Law School
Torts / Domestic Relations / Equity

Roger Schechter is the William T. Fryer Research Professor of Law at GW, where he teaches Torts.

He was a Visiting Professor at the University of Virginia School of Law and NYU Law School and an Adjunct Instructor at Cardozo Law School. He has also served as an instructor at the AALS Training Program for new law teachers. He is a graduate of GW and the Harvard Law School.
17 year BAR/BRI lecturer

Professor Michael Simons
St. John's University School of Law
Evidence

Michael Simons teaches Criminal Law and Evidence at St. John's University School of Law. He graduated *magna cum laude* from the College of the Holy Cross in 1986 and *magna cum laude* from Harvard Law School in 1989, where he was an editor of the *Harvard Law Review*. Following graduation, he clerked for the Honorable Louis F. Oberdorfer of the United States District Court for the District of Columbia. He later served as a staff attorney for *The Washington Post* and as an Assistant U.S. Attorney in the Southern District of New York.
4 year BAR/BRI lecturer

Professor David Sokolow
University of Texas School of Law
Contracts / Sales / Equity

A graduate of Columbia University School of Law, David Sokolow is now one of the most popular professors at the University of Texas School of Law, where he teaches Contracts, Corporations, Entertainment and Art Law. He practiced with the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison before joining UT's faculty in 1981. In addition to his undergraduate and law degrees, Professor Sokolow also holds graduate degrees in art history and business administration.
15 year BAR/BRI lecturer

Professor Charles Whitebread
University of Southern California Law Center
Criminal Law & Procedure

Charlie Whitebread is the George T. Pfelger Professor of Law at the USC Law Center. He previously taught at the University of Virginia School of Law. He graduated from Princeton University and Yale Law School, where he was Editor of the *Yale Law Journal*. He has written extensively in the areas of Criminal Law and Procedure.
33 year BAR/BRI lecturer

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EXHIBIT F

Saturday, June 23, 2007

About BAR/BRI

A message from Richard J. Conviser, Founder and Chairman

I founded BAR/BRI on one simple premise: To provide law students and bar exam takers the tools they need to excel on their exams.

Now 40 years and almost 1 million students later, BAR/BRI is better prepared than ever to execute that mission.

From your very first day of law school, the BAR/BRI Law School Program provides you with our acclaimed outlines, practice questions, and StudySmart® Software, as well as review lectures in many locations. Click for an **excerpt from a lecture**. When you are ready to tackle the MPRE during your second or third year of law school, the BAR/BRI MPRE Review includes two outlines, a comprehensive review lecture, hundreds of practice questions, and StudySmart® Software for the MPRE.

And of course, when you are ready to tackle the ultimate final exam, ***your bar exam***, BAR/BRI will be there for you with the nation's most experienced, most personalized, and most up-to-date bar review course. Only BAR/BRI combines comprehensive, yet concise outlines, dynamic law school professors, and the most complete Multistate and Essay Testing programs to give you the best chance of passing your bar exam ***the first time***.

I am also pleased to introduce you to two new BAR/BRI programs:

- **The BAR/BRI Pre Law School Program** is a one-week intensive program designed to give students the knowledge, skills and insights needed to finish at the top of their first year class.
- **The BAR/BRI Patent Bar Review Course** utilizes a unique schedule, the most up-to-date materials, practice questions and software to help you pass the Patent Bar Exam, regardless of your knowledge of patent law.

Thank you for your interest in BAR/BRI. All of us at BAR/BRI look forward to helping you maximize your performance in law school and on your exams.

Richard Conviser

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ALBANY

Index No. 4750-07

JEFFREY PROVENZANO, THOMAS BENJAMIN, and MONICA AGOSTO, on behalf of themselves and all others similarly situated,

Plaintiffs

-against-

THE THOMSON CORPORATION, and WEST PUBLISHING CORPORATION d/b/a BAR/BRI,

Defendants

AMENDED COMPLAINT

Robert L. Arleo, Esq.
Attorney for the Plaintiffs
164 Sunset Park Road
Haines Falls, New York 12436
(518) 589-5264

Signature (Rule 130-1.1-a)

ROBERT L. ARLEO

Service of a copy of the within is hereby admitted.

Dated July 12, 2007